

DOCUMENT RESUME

02655 - [A1672660]

[Alleged Restrictive Solicitation Specification]. B-187721. June 7, 1977. 4 pp.

Decision re: Constantine N. Polites and Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).  
Organization Concerned: Department of the Navy: Naval Supply  
Center, Norfolk, VA.  
Authority: 29 C.F.R. 1910.28(c). B-183614 (1976). B-186057  
(1976).

The protester requested consideration of a decision claiming restrictiveness of certain specifications and various amendments included in a solicitation. GAO will not question a specification which the protester believes to be unduly restrictive where an agency shows that the use of the items to be acquired requires conformance with the restrictive specification. However, GAO recommended that standards for the use of the items be developed. (Author/SC)

2660

02655

The Register  
Page 2

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE: B-187721**

**DATE: June 7, 1977**

**MATTER OF: Constantine N. Polites & Co.**

**DIGEST:**

GAO will not question specification which protester believes is unduly restrictive, where agency shows that items to be acquired are subject to use under conditions which may require conformance with restrictive specification. However, GAO recommends development of standards for use of items.

Constantine N. Polites & Co. (Polites) requests reconsideration of our decision in Constantine N. Polites & Co., B-187721, November 12, 1976, 76-2 CPD 408. The protester claims certain specifications and various amendments included in solicitation N00189-77-R-0011, issued by the Naval Supply Center, Norfolk, Virginia (Navy) are restrictive.

It appears that the Navy made numerous changes in the solicitation in question, largely in response to Polites' protests, and it is agreed by the parties that only one issue remains. Indeed, the Navy has reevaluated its requirements, and the changes made have resulted in completely altered technical specifications, rendering Polites' request for reconsideration of our earlier decision academic.

The solicitation anticipates the procurement of a number of pipe clamps, used by the Navy in the erection of staging (scaffolding) required in the maintenance of ships. The coupler in question is used to join 2-inch nominal diameter steel pipe. The ability of the Polites coupler to give satisfactory performance when used in normal industrial applications is not questioned, for example, where scaffolding is constructed in accord with Occupational Safety and Health Administration (OSHA) standards, see 29 C.F.R. § 1910.28(c) (1976). It cannot, however, satisfy the Navy's additional requirement that it be able to withstand 25,000 pounds force in

B-187721

tension. This requirement corresponds to a 6,250 pound loading in tension, as opposed to compression, assuming the safety factor of four used by the Navy. The safety factor is the same as established in the OSHA standards and its appropriateness is not questioned.

As the Navy explains, it developed the disputed requirement because it uses the coupler to fasten a horizontal connecting pipe to vertically positioned pipes, in turn using the structure to support a 20,000 pound steel "brow" or gangplank. At the conference held in this matter, Polites conceded that the 25,000 pound requirement is equivalent to the load which would be asserted if an equal load is borne by a horizontal pipe coupled to a vertical supporting member. Nevertheless, Polites maintains that a 6,250 pound load cannot be achieved in practice. In its view, the requirement is arbitrary because any commercially available coupler will slip before it will break. If the couplers will slip under 8,000 pounds of force, no more than a 2,000 pound load should be placed on them, to allow the same margin of safety. The Navy has found that the Polites coupler will withstand approximately 16,000 pounds force in tension. Thus, Polites believes its coupler provides ample strength, if used in accord with industry standards. It notes further that its coupler has been approved for use by the Philadelphia Naval Shipyard (Philadelphia). In this instance, the Navy's Norfolk facility is acting as buyer for both itself and Philadelphia.

To increase resistance to slippage, the Navy uses additional couplers as clamps. These couplers act as "stops" to prevent the load from sliding down the vertical pipes. Tests conducted by an independent testing firm retained by Polites indicate that use of multiple couplers as clamps in the described manner will increase slippage resistance, in principle permitting a 25,000 pound load to be placed on the active coupler, that is, the uppermost coupler which is used to connect the vertical and horizontal members. The test also disclosed an unexpected consequence--the vertical pipe was found to buckle before the full test load could be imposed.

N-187721

In this connection, Polites concedes that the type of pipe used in erecting gangplanks at Norfolk was not known. The tests commissioned showing buckling may not be, as the Navy suggests, wholly representative of conditions at Norfolk. However, we believe the fact that the pipe buckled when tested should be cause for concern, because the Navy, evidently, has not conducted similar tests, and failure, if representative, would demonstrate that the required safety factor is not maintained.

Our Office has long recognized the broad discretion permitted procuring activities in drafting specifications reflective of their minimum needs. Digital Equipment Corporation, B-193614, January 14, 1976, 76-1 CPD 21. Consequently, we will not disturb a procuring activity's determination of its minimum needs unless it is clearly shown to be without a reasonable basis. Microcom Corporation, B-186057, November 8, 1976, 76-2 CPD 385. The integrity of the couplers is a matter affecting the safety of personnel who must perform work on or under the structures erected, and we believe that the Navy has demonstrated a rational basis for insisting that the coupler be required to meet the disputed 25,000 pound test specification because the coupler may be used in the nonstandard application discussed.

Although safety at Norfolk is primarily the responsibility of the Navy, it appears that Navy-wide staging construction standards have not been developed. Each yard constructs staging on an ad hoc basis, and, as a result, requirements at Norfolk may be imposed on couplers which might not be necessary were industrial practices followed. We are advised that at Norfolk the practice is to jerry-build structures, relying on past experience and requesting engineering assistance only when the structure to be erected differs significantly from prior applications. Norfolk construction personnel argue that a slipping coupler will shave enough metal from the attached pipe to cause them to bind, and that in any event, the couplers will hold if sufficiently tightened. In that regard, limits are imposed by the specified strength of the coupler bolts.

B-187721

We are advised that the Navy is developing a standard military specification for couplers. By separate letter of today we are suggesting to the Secretary of the Navy that consideration also be given to developing Navy-wide standards for the use of couplers in the construction of staging.

*R. F. Kettner*  
Deputy Comptroller General  
of the United States